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STATE OF MARYLAND DEPARTMENT OF THE ENVIRONMENT WATER MANAGEMENT ADMINISTRATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY TENTATIVE DETERMINATION TO ISSUE GENERAL PERMIT

FACT SHEET

The Maryland Department of the Environment (MDE) has reached a tentative determination to issue the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Associated with Construction Activity. MDE intends to issue the general permit with an effective date of January 1, 2014, and a term of five years. Modifications to this General Permit incorporate all federal requirements specified in the Code of Federal Regulation (40 CFR 122.26) as well as State requirements described under the Code of Maryland Regulations (COMAR 26.08.04).

Purpose/Authority

The purpose of the federal NPDES stormwater program is to control pollution generated from runoff associated with industrial activity, including construction, and municipal separate storm sewer systems. An individual or general permit is required for all construction activity in Maryland with a planned total disturbance of 1 acre or more. Conditions of the permits include compliance with approved erosion/sediment control and stormwater management plans, self-inspection and record keeping. The permit authorizes stormwater discharges from these construction sites. The primary pollutant to be controlled is sediment. The volume of stormwater discharge varies and depends on the site size, weather, and other factors. Authority for Maryland's NPDES General Permit for Construction Activity is through the federal Clean Water Act Section 402 and the Code of Federal Regulations (40 CFR 122.26), and the State Environment Article, Title 9, Subtitle 3: COMAR 26.08.04.

This general permit is a joint federal and State permit and subject to federal and State regulations. The Clean Water Act (CWA), federal regulations, and numerous guidelines and policies of the United States Environmental Protection Agency (EPA) provide the federal permit requirements. The Annotated Code of Maryland, Environment Article, Code of Maryland Regulations (COMAR), and policies and guidelines of the Maryland Department of the Environment (MDE) provide the State permitting requirements.

Permit History

MDE issued its first NPDES general permit for stormwater associated with construction activity in 1993. This permit was required for all construction activity disturbing five acres or more. MDE reissued the general permit in 1997 and 2003. In accordance with EPA's Phase II stormwater regulations, the 2003 general permit was required for all construction activity disturbing one acre or more. MDE reissued a subsequent general permit on March 31, 2008, and the current general permit became effective on July 13, 2009. The current permitting process is intended to issue the next general permit so that it takes effect on January 1, 2014, following expiration of the 2009 general permit on December 31, 2013.

Significant Changes to Permit Requirements

Under the Eligibility section (Part I.C), the permit clarifies that a person is eligible to be the permittee only if that person (alone or with others) has control over the permitted activities on the site. This section also clarifies that earth disturbance for mining activity is not eligible for the general permit, but that construction of landfill cells requires permit coverage until the cell ceases construction and begins operating as a landfill accepting wastes. As a further clarification of permit eligibility, the definition of construction activity in Part IX now states that construction activity includes construction-related activities (within one quarter mile of the main activity) that specifically support the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas. This change is consistent with existing MDE policy and is similar to the text of EPA's 2012 Construction General Permit. The definition states that construction activity does not include earth disturbance for agricultural and silvicultural production activities such as for orchards, cultivated crops, pastures, range lands, and forest lands, unless those activities involve construction of structures, roads, or other appurtenances. This is consistent with the Clean Water Act and NPDES regulatory text that exclude these activities from those required to obtain NPDES permits.

The permit allows for emergency authorization for earth-disturbing activities prior to obtaining general permit coverage in very limited circumstances in response to a public emergency, such as a natural disaster. The operator of such activities must inform MDE, obtain written authorization within 24 hours of beginning disturbance, and follow up with a complete NOI within 7 days. This procedure recognizes that earth disturbance must begin in some critical and unforeseen situations to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services. It is similar to emergency authorization allowed under EPA's 2012 Construction General Permit, but with generally more stringent notification procedures.

Permittees whose projects are currently covered under a previous version of the general permit and continuing on or after January 1, 2014, must apply for coverage under this general permit by December 31, 2013. Applicants for new projects must apply in sufficient time to allow for the 14-day public notification period. In all cases, the applicant must document to MDE that the appropriate approval authority has approved the erosion and sediment control plan, then obtain permit coverage before beginning earth disturbance.

Part III.A of the permit describes allowable and unallowable non-stormwater discharges. MDE has modified this section to:

- Clarify that discharges from concrete and asphalt plants, including batch plants, are not authorized under this permit;
- Clarify that discharges from sites with known contamination from pollutants other than sediment are not authorized;

- Include certain prohibitions, required under EPA regulations at 40 CFR 450, related to discharges of washout and cleanout of concrete, fuels and oils, and other construction materials; and
- Clarify that the permit authorizes discharges from dewatering from construction excavations where managed by an appropriate control.

Part III.D of the permit requires the permittee to ensure site personnel are trained to comply with the permit.

Part IV.A of the permit includes new language required by the federal effluent limitation guidelines at 40 CFR 450.21. The permittee must minimize the discharge of pollutants through wash waters, minimize the exposure of construction materials and wastes to stormwater, and take measures to prevent potential pollutant spills and leaks and respond to them when they happen.

Some additional requirements of the federal effluent limitation guidelines at 40 CFR 450.21 are not written directly into the permit because they are implemented through Maryland's erosion and sediment control regulations and the permit requirement to have an approved erosion and sediment control plan. Prior to earth disturbance, the site must have a plan written to MDE's Standards and Specifications for Soil Erosion and Sediment Control and approved by the appropriate approval authority. Four sections of the federal effluent limitation guidelines are effectively covered by the Standards and Specifications for Soil Erosion and Sediment Control and erosion and sediment control regulations: 40 CFR 450.21(a), Erosion and Sediment Controls; 40 CFR 450.21(b), Soil Stabilization; 40 CFR 450.21(c), Dewatering; and 40 CFR 450.21(f), Surface Outlets. The following table outlines the specific requirements of the federal effluent limitation guidelines and the parts of the Standards and Specifications or erosion and sediment control regulations that set corresponding requirements for Maryland permittees. MDE provides further information about the Standards and Specifications for Soil Erosion and Sediment Control, as well as their full text, at:

http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/SoilErosionandSedimentControl/Pages/Programs/WaterPrograms/SedimentandStormwater/erosionsedimentcontrol/esc_standards.aspx

Changes to the public notification process for NOI submissions are also being incorporated into this permit. MDE is revising the section of the general permit related to the public notification period (now in Part II.B) of the general permit to change the public notification period from 45 days for sites disturbing 3 acres or more and 30 days for sites disturbing 1 acre to less than 3 acres to the same period for all sizes of disturbance: 14 days. This time period is consistent with the waiting period EPA included in its own Construction General Permit issued in 2012 (EPA's permit is required in states and territories where it is the permitting authority). All applicants must still obtain erosion and sediment control approval before MDE will issue coverage under the general permit. Note that the projects that must obtain coverage under the general permit include not only residential and commercial construction but also projects undertaken to address significant public needs, such as construction of schools, transportation infrastructure, parks, and public safety facilities.

MDE intends to develop an electronic application, permit tracking, and payment system and is planning on implementing this system prior to the effective date of the new general permit. Therefore, language throughout the permit reflects changes to the permit submission, transfers, and termination process electronically. MDE intends to continue accepting paper documents under this permit for those who cannot use the electronic system.

Effluent Limitation Guideline Citation	Effluent Limitation Guideline Requirement	MDE Standards and Specifications or Regulatory Citation (COMAR)	Notes
40 CFR 450.21(a)(1)	Control stormwater volume and velocity within the site to minimize soil erosion	Standards and Specifications in general	MDE designed the Standards and Specifications in order to control stormwater volume and velocity to minimize erosion.
40 CFR 450.21(a)(2)	Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion	Standards and Specifications D-4, E-7, and E-8	
40 CFR 450.21(a)(3)	Minimize the amount of soil exposed during construction activity	Standards and Specifications A-3.4, COMAR 26.17.01.01.B(13) and 26.17.01.07	Grading unit not to exceed 20 acres at a time
40 CFR 450.21(a)(4)	Minimize the disturbance of steep slopes	Standards and Specifications A-2 and A-3.3,	The concept plan developed under A-2 considers topography in site design.
40 CFR 450.21(a)(5)	Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site	Standards and Specifications Page I.1 and Section A	Page I.1 notes the factors influencing soil erosion that must be considered in developing a plan. All parts of Section A, Planning and Design, provide further requirements for proper consideration of these factors in plan development.
40 CFR 450.21(a)(6)	Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible	Standards and Specifications A-3.2	
40 CFR 450.21(a)(7)	Minimize soil compaction and, unless infeasible, preserve topsoil	Standards and Specifications A-3.7	
40 CFR 450.21(b)	Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority.	COMAR 26.17.01.07.B(6)(f)	Following initial soil disturbance or redisturbance, permanent or temporary stabilization is required within three calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and seven calendar days as to all other disturbed areas on the project site except for those areas under active grading.
40 CFR 450.21(c)	Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls	Standards and Specifications Section F	
40 CFR 450.21(f)	When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible	Standards and Specifications G-1 and G-2	

EPA's effluent limitation guidelines, as originally issued, included a numerical limit for turbidity from construction sites of certain sizes [at 40 CFR 450.22(a) and (b)]. EPA subsequently stayed the numerical limit in the guidelines, and has signalled its intent to withdraw this portion of the effluent limit guideline in proposed rulemaking. As a result, MDE's General Permit does not include this part of the effluent limitation guidelines. Please see <http://water.epa.gov/scitech/wastetech/guide/construction/index.cfm> for more information about EPA's actions regarding the numerical limit.

Part IV.B clarifies that a permittee which has identified a release of significant amounts of sediment must notify MDE.

MDE modified Part IV.C (Monitoring and Records) to indicate that:

- The person conducting self-inspections must hold a Certificate of Training card for responsible personnel as required by COMAR 26.17.01.06;
- Permittee self-inspections need not begin until earth disturbance first occurs;
- Self-inspections on disturbed areas are required at least once every week, on a Sunday to Saturday basis;
- Self-inspections on previously disturbed portions of a site returning to stabilized status are required only monthly; and
- Records may be maintained off the construction site where necessary, subject to conditions allowing MDE to inspect the records in a timely fashion.

MDE also clarified the list of records that must be maintained and the record retention responsibilities for permittees who transfer or terminate their permits.

The permit updates the penalties available under the Clean Water Act in accordance with the current text of federal law.

Term of Permit

The permit is effective on January 1, 2014, and expires on December 31, 2018. Coverage under the general permit will expire when the general permit is reissued or expires, when a Notice of Termination form has been completed and received by MDE, or when MDE administratively terminates coverage for a site, whichever occurs first.

Fee

The permit fee is as set in COMAR 26.08.04.09-1. MDE will not require the payment of an additional fee for applicants who obtained coverage under the 2009 General Permit on or after January 1, 2013, and continue to hold active coverage as of December 31, 2013. However, such applicants must still submit to MDE a new Notice of Intent for coverage under the 2014 General Permit via the electronic system or on paper by the deadline of December 31, 2013, in order to qualify.

Maryland's Soil Erosion and Sediment Control and Stormwater Management Programs

This general permit contains numerous references to Maryland state standards and regulations regarding soil erosion and sediment control (ESC) and post-construction stormwater management requirements, which are equivalent to or exceed standards described in the CFR and EPA's current General Permit for Stormwater Associated with Construction Activity.

Maryland's Erosion Control Law and regulations specify the general provisions for program implementation; provisions for delegation of enforcement authority; requirements for erosion and sediment control ordinances; exemptions from plan approval requirements; requirements for training and certification programs; criteria for plan submittal, review, and approval; procedures for inspection and enforcement; and applicant responsibilities. Clearly defining minimum standards is essential to make erosion and sediment control work. MDE has established minimum criteria for effective erosion and sediment control practices. The 2011 Standards and Specifications for Soil Erosion and Sediment Control are incorporated by reference into State regulations and serve as the official guide for erosion and sediment control principles, methods, and practices. Further information about these updated Standards and Specifications is available on MDE's Website. Under the Erosion and Sediment Control Regulations at COMAR 26.17.01.08.G, some sites meeting certain grandfathering conditions may continue to operate under previously approved plans meeting the 1994 Standards and Specifications for Soil Erosion and Sediment Control.

Maryland's Stormwater Management Act was passed by the Maryland General Assembly in 1982. The primary goal of the State and local programs established by the Act is to "maintain after development conditions, as nearly as possible, the predevelopment runoff characteristics." This program covers the permanent stormwater Best Management Practices installed on the developed site, rather than the controls used during construction activities. On April 24, 2007, Governor Martin O'Malley signed the "Stormwater Management Act of 2007" (Act), which became effective on October 1, 2007. The Act requires that environmental site design (ESD) be implemented to the maximum extent practicable through the use of nonstructural best management practices and other better site design techniques. MDE has developed guidance including changes to regulation and a supplement to the Maryland Stormwater Design Manual for ESD

(http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/MarylandStormwaterDesignManual/Pages/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.aspx).

Applicants for the General Permit include information on their NOIs listing the stormwater BMPs expected to be used at the time of application. The General Permit requires that permittees obtain approval (from the appropriate approval authority, such as a county government) for the Stormwater Management Plan prior to beginning earth disturbance, unless exempt or waived by the approval authority.

Availability of General Permit and Public Comment Procedures

Any person who wishes to review the tentative general permit may do so by visiting MDE's website at: http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/WaterDischargePermitApplications/Pages/Permits/watermanagementpermits/water_applications/gp_construction.aspx.

In addition, a person may review the tentative general permit by contacting Ms. Karen Smith at (410) 537-3510 to make an appointment. The information is available for review during MDE's normal working hours, 8:00 a.m. to 5:00 p.m. Monday through Friday. Copies of the document may be procured at a cost of \$0.36 per page. Please review the Notice of Tentative Determination for information about the public hearing date, time, and location, as well as the procedures and deadlines for submission of written comments. The Notice of Tentative Determination is available on the webpage noted above.